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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,346	09/24/2003	Mohammad Jaber Borran	873.0119.U1(US)	7074
29683	7590	11/28/2005		EXAMINER
HARRINGTON & SMITH, LLP 4 RESEARCH DRIVE SHELTON, CT 06484-6212			BURD, KEVIN MICHAEL	
			ART UNIT	PAPER NUMBER
			2631	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/671,346	BORRAN ET AL.	
	Examiner	Art Unit	
	Kevin M. Burd	2631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-37,39 and 40 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 13-22,34 and 35 is/are allowed.
- 6) Claim(s) 1-12,23-33,36,37,39 and 40 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

1. This office action, in response to the amendment filed 9/29/2005, is a final rejection.

Response to Arguments

2. The previous rejection of the claims under 35 USC 101 is withdrawn.

3. The previous rejection of the claims under 35 USC 112, first paragraph, is withdrawn.

4. Applicant's arguments filed 9/29/2005 have been fully considered but they are not persuasive. Claims 1-12, 23-33, 37, 39 and 40 claim an apparatus or a system containing functional language. MPEP 2114 states while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. It is unclear how the apparatus claimed meets this requirement. For this reason, the rejections of claims 23-32, 36, 37, 39 and 40 are maintained and new rejections of claims 1-12 and 33, necessitated by the amendment, are stated below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 23-32 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by de Couasnon et al (US 5,329,552).

Regarding claims 23-31 and 36, de Couasnon discloses a wireless communication system network element shown in figure 1. This element comprises a storage means for storing a digital representation of constellation points (column 3, lines 1-4 and column 4, lines 56-63). This memory can store any constellation points. The digital words will be modulated and transmitted from antenna 12 in figure 1 (column 3, lines 1-31).

Regarding claim 32, de Couasnon discloses "the number of points making up a constellation has a direct influence on the throughput of the pathway and is chosen as a function of the signal-to-noise ratio and of the distortion of the pathway." The transmitter must receive a signal to measure the signal-to-noise ratio and to select the constellation.

6. Claims 1-12, 33, 37, 39 and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by Lozano (US 2003/0076797).

Regarding claims 1-12 and 33, Lozano discloses a MIMO communication system (paragraph 0012) comprising an antenna for receiving a wireless signal as shown in figure 1. The analog signal is sampled and processed by digital processors and stored

in memories (paragraph 0010). The signal is transmitted via a constellation. The constellation is determined according to a rate and is determined by a rate controller (paragraphs 0016 and 0019). The rate controller can fit this data to any constellation that is appropriate as dictated by the rate.

Regarding claims 37, 39 and 40, Lozano discloses a receiver comprising an antenna for receiving a wireless signal as shown in figure 1. The analog signal is sampled and processed by digital processors and stored in memories (paragraph 0010). The signal is transmitted via a constellation. The constellation is determined according to a rate and is determined by a rate controller (paragraphs 0016 and 0019). The rate controller can fit this data to any constellation that is appropriate as dictated by the rate.

Allowable Subject Matter

7. Claims 13-22, 34 and 35 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

Art Unit: 2631

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin M. Burd whose telephone number is (571) 272-3008. The examiner can normally be reached on Monday - Friday 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ghayour can be reached on (571) 272-3021. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kevin M. Burd
11/26/2005

Kevin M. Burd
KEVIN BURD
PRIMARY EXAMINER